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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 12 दिसम्बर, 1997

आ.अ. 124(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 1992 की निर्वाचन अर्जी सं. 27 में चण्डीगढ़ स्थित पंजाब और हरियाणा के उच्च न्यायालय के तारीख 29-8-1997 के निर्णय को इसके द्वारा प्रकाशित करता है। (निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[संख्या 82/रा. स.-हरि/27/92/97]

आदेश से,

सी. आर. ब्रह्मम्, सचिव

ELECTION COMMISSION OF INDIA NOTIFICATION

New Delhi, the 12th December, 1997

O.N. 124(E).—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgement dated 29-8-97 of the High Court of Punjab and Haryana at Chandigarh in Election petition No. 27 of 1992.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CIVIL ORIGINAL SIDE ELECTION PETITION NO. 27 OF 1992

Kanwal Singh Bedhadak Patwari, President of National Pandav Dal C/o Om Parkash Yadav Mistan Bhandar, Railway Road
Ganaur, District Sonapat (Haryana)Petitioner

Versus

1. Sh. Ramji Lal Jangra, elected Member of Rajya Sabha, Village and Post Office Arya Nagar District Hisar.
2. Sh. Shamsher Singh Surjewala, elected Member of Rajya Sabha, Village Sheogarh, alias Surja Khera, P. O. Narwana, Tehsil Narwana Distt. Jind (Haryana).
3. Sh. Om Parkash Jindal, M.L.A. Jindal House, Delhi Road, Hisar (Haryana).

.....Respondents

Election petition under Part 6 of the Representation of People Act, 1951 (hereinafter referred to as Act) praying that election petition may kindly be allowed and the election of respondent No. 1 and 2 may be declared null and void.

It is further prayed that respondent No. 1 and 2 may be disqualified for the reasons stated there in the petition.

Dated the 29th August, 1997

PRESENT

THE HON'BLE MR. JUSTICE V. K. BALI

For the Petitioner : Mr. Sukant Gupta, Advocate.

For the Respondents : Mr. J. K. Sibal, Senior Advocate with

Ms. Rita Kohli, Advocate, for No. 1.

: Mr. S. C. Kapoor, Sr. Advocate with

Mr. Ashish Kapoor, Advocate for No. 2.

JUDGMENT

V. K. BALI, J. (ORAL).

Kanwal Singh Bedhadak Patwari through present Election Petition filed by him under Part 6 of the Representation of People Act, 1951 (hereinafter referred to as the Act) calls in question the election of respondents No. 1 and 2 to the Council of States (Rajya Sabha) by elected members of Haryana Legislative Assembly. It has, inter alia, been pleaded that the petitioner is a voter of Haryana Legislative Assembly and his name has been entered in the said list in Part No. 32, electoral serial No. 589 of village Naya Bans Assembly Constituency No. 40 (Kailana). Vide notification dated July 10, 1992, two vacancies of Rajya Sabha were to be filled up from the State of Haryana. As per election programme notified filing of nomination papers was from 10th of July 1992 to 17th of July, 1992. The scrutiny of the nomination papers was done on 18th of July, 1992 and the last date for withdrawal was 20th of July, 1992. Petitioner addressed a letter to the Returning Officer on 13th of June, 1992, for supply of nomination papers and list of members of Legislative Assembly constituting the electoral roll for the election of two Rajya Sabha seats to be filled up from the State of Haryana for which election was to be held on 27th July, 1992. The Returning Officer did not supply the list of elected members of Legislative Assembly, so the petitioner could not get the proposer in time. Petitioner visited the office of the Returning Officer on 11th/12th of July 1992 and got the list of the members of the Legislative Assembly for the purpose of filing nomination papers. Members of the respective parties i.e. Congress (I), Haryana Vikas Party, Samajwadi Janta Party went underground and the prospective candidates i.e. those of Congress (I) Party and Haryana Vikas Party took the members to a place unknown to any one with an intention to prevent the other candidates to file nomination papers as the requisite number of proposers shall not be available. Two candidates i.e. respondents No. 1 and 2 of Congress Party filed nomination papers to the Council of States and by respondent No. 3 of the Haryana Vikas party as there was no problem for them to get proposers as the said voters were confined at unknown places and the respective parties got the proposers as required under the Act. None of proposer on behalf of the respondents was present at the time of presentation of the nomination papers which would go to show that all proposers were underground. Since all the voters were put underground by the respective parties, the petitioners could not and was not in a position to get a proposer and therefore, file nomination papers without any proposer. The nomination paper of the petitioner was rejected, thus, constraining the petitioner to file election petition primarily on the ground that by corrupt practices adopted by respondents No. 1 and 2, he could not file a valid nomination paper and thus, could not as such be a candidate.

Pursuant to the notice issued by this Court, the respondents have put in appearance through Mr. J. K. Sibal and Mr. S. C. Kapoor, Senior Advocates and have raised a preliminary objection with regard to maintainability of this election petition. It has been canvassed by the learned Counsel representing the respondents that the petitioner is neither a candidate nor claims to have been duly nominated as a candidate and therefore, by virtue of provisions of Section 81 of the Representation of People Act, he cannot call in question the election of respondents. Section 81 of the 1951 Act reads thus :

“81. Presentation of Petitions : (1) An election petition calling in question any election may be presented on

one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the (High Court) by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

It is clear from the section reproduced above that election can be called in question by any candidate at such election or any elector. Candidate has been defined by Virture of sub-clause (b) of section 79 of 1951 Act which reads thus :—

(b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election."

For the purpose of contesting election to the Rajya Sabha an elector has to be an M.L.A. and concededly the petitioner is not an M.L.A. He is, therefore, not an elector. However, the controversy is with regard to the petitioner claiming to have been duly nominated in election. Learned Counsel for the parties are ad idem that with a view to contest an election to the Rajya Sabha a person as such may not be an elector but then in that case he can be duly nominated candidate only if his nomination papers are proposed by 1/10th of members of the Legislative Assembly. Concededly as well the nomination paper filed by the petitioner has not been proposed by even a single M.L.A. From the language of sub-clause (b) of section 79 and section 81 of the Act, this Court is of the considered view that the petitioner is not a candidate as defined under clause (b) of section 79 and therefore, could not call into question the election of respondents No. 1 and 2. In so far as the claim of the petitioner to have been duly nominated is concerned, it is true that he cannot claim to be so duly nominated unless his nomination is proposed by 1/10th of the members of the Legislative Assembly.

Mr. Gupta, however, contends that the fact that the petitioner was barred to be a candidate is enough and all that was required was that a person should declare his intention to be a candidate. For his aforesaid stand the Counsel relies upon the judgment of the Supreme Court in *S. Khader V. Munnuswami* A.I.R. 1955 S.C. 775. Specific reliance has been placed by the learned Counsel on the observations of the Supreme Court on the following passage :—

"When, therefore, a question arises under S. 79(b) whether a person had become a Candidate at a given point of time, what has to be seen is whether at that time he had clearly and unambiguously declared his intention to stand as a candidate, so that it could be said of him that he held himself out as a prospective candidate. That he has merely formed an intention to stand for election is not sufficient to make him a prospective candidate, because it is of the essence of the matter that he should hold himself out as a prospective candidate. That can only be if he communicates that intention to the outside world by declaration or conduct from which it could be inferred he intends to stand as a candidate"

The observations as have been culled out from *S. Khader's* case (supra) came into being on entirely different facts.

The petitioner might have a remedy else where but surely he cannot call into question the elections of respondent No. 1 and 2. This Court by way of interpretation of sections of the Representation of the People Act cannot widen its scope. It is settled law that the Court in the guise of interpretation cannot add or subtract from the unambiguous language applied in the statute. Strictly speaking, therefore, by virtue of sub-clause (b) of section 79 and section 81 of the Act of 1951, petitioner cannot call into question the election of respondents No. 1 and 2. Upholding therefore, the preliminary objection raised by respondents No. 1 and 2, this Court is left with no choice but for to dismiss this petition. No order as to costs.

August 29, 1997

Sd/-

V. K. BALI, Judge

[No. 82/CS-HR/27/92/97]

By Order,

C. R. BRAHMAM, Secy.

